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NATIONAL RIFLE ASSOCIATION OF AMERICA  
**INSTITUTE FOR LEGISLATIVE ACTION**  
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**NRA**

Office of the Executive Director  
**CHRIS W. COX**

July 7, 2009

The Honorable Patrick J. Leahy	The Honorable Jeff Sessions
Chairman	Ranking Member
U.S. Senate Committee on the Judiciary	U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building	152 Dirksen Senate Office Building
Washington, D.C. 20510	Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Sessions:

I am writing to express the National Rifle Association's very serious concerns about the nomination of Judge Sonia Sotomayor to the Supreme Court of the United States.

We are particularly dismayed about the U.S. Court of Appeals for the Second Circuit's recent decision in the case of *Maloney v. Cuomo*, which involved the application of the Second Amendment as a limit on state law, via incorporation of the Second Amendment through the Fourteenth Amendment's Due Process Clause. Judge Sotomayor was on the panel that decided this case in a brief—and in our opinion, clearly incorrect—*per curiam* opinion.

The *Maloney* panel claimed that “it is settled law...that the Second Amendment applies only to limitations the federal government seeks to impose on this right.” It based this ruling on the 1886 case of *Presser v. Illinois*, decided long before the development of the Supreme Court's modern incorporation doctrine. But as the Court made clear last year in *District of Columbia v. Heller*, post-Civil War cases such as *Presser* “did not engage in the sort of Fourteenth Amendment inquiry required by our later cases.”

Further, *Presser* (along with *United States v. Cruikshank*) only stands for the concept that the guarantees in the Bill of Rights do not apply *directly* to the States. As we have seen throughout the Supreme Court's Twentieth Century jurisprudence, most of the Bill of Rights has been incorporated against the States through the Fourteenth Amendment's Due Process Clause. Thus, the failure of the *Maloney* panel to engage in a proper due process analysis of the Second Amendment is extremely troubling, to say the least.

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The Second Circuit's decision (as well as the Seventh Circuit's similarly flawed reasoning in *Nat'l Rifle Ass'n of Am., Inc. v. City of Chicago*) is at odds with the Ninth Circuit's decision in *Nordyke v. King*, which did engage in a full Fourteenth Amendment analysis (again, as *required* by the Supreme Court in *Heller*). The Ninth Circuit held that while the Second Amendment does not apply to the states directly or through the Privileges or Immunities Clause, modern Fourteenth Amendment cases do require its incorporation through the Due Process Clause. This stark circuit split makes it highly likely that the Supreme Court will take up one or more of these cases in the immediate future, perhaps as soon as next term.

In addition, Judge Sotomayor was a member of the panel in the case of *United States v. Sanchez-Villar*, where (in a summary opinion) the Second Circuit dismissed a Second Amendment challenge to New York State's pistol licensing law. That panel, in a terse footnote, cited a previous Second Circuit case to claim that "the right to possess a gun is clearly not a fundamental right." Since the precedent cited for that point is no longer valid in the wake of *Heller*, Judge Sotomayor should be asked whether she would take the same position today.

The cases in which Judge Sotomayor has participated have been dismissive of the Second Amendment and have troubling implications for future cases that are certain to come before the Court. Therefore, we believe that America's eighty million gun owners have good reason to worry about her views. We look forward to a full airing of her past decisions and judicial philosophy at the upcoming committee hearings, and urge you and all committee members to engage in the most serious questioning possible on these critical issues.

Out of respect for the confirmation process, the NRA has not announced an official position on Judge Sotomayor's confirmation. However, should her answers regarding the Second Amendment at the upcoming hearings be hostile or evasive, we will have no choice but to oppose her nomination to the Court.

Finally, we would caution you against lending any credence to the endorsement of Judge Sotomayor's nomination by organizations that falsely claim to represent gun owners, while promoting an anti-gun agenda. These front groups' actions give them no credibility to speak on this nomination.

Thank you for your attention to our concerns. Should you have any questions or wish to discuss further, please do not hesitate to call on me personally.

Sincerely,



Chris W. Cox

Executive Director

Cc: The Honorable Harry Reid, Senate Majority Leader  
The Honorable Mitch McConnell, Senate Republican Leader  
Members of the Senate Committee on the Judiciary

LETTER RELEASED TODAY:

July 7, 2009

Dear Senators:

As Americans who have dedicated themselves to protecting the Second Amendment right of U.S. citizens to keep and bear arms, we urge you not to confirm Judge Sonia Sotomayor as the next associate justice of the United States Supreme Court.

It is extremely important that a Supreme Court justice understand and appreciate the origin and meaning of the Second Amendment, a constitutional guarantee permanently enshrined in the Bill of Rights. Judge Sotomayor's record on the Second Amendment causes us grave concern over her treatment of this enumerated constitutional right.

Last year, the Supreme Court decided the landmark case *District of Columbia v. Heller*, holding that the Second Amendment guarantees to all law-abiding, responsible citizens the individual right to keep and bear arms, particularly for self-defense. Following *Heller*, the Supreme Court is almost certain to decide next year whether the Second Amendment applies to states and local governments, as it does to the federal government (see *NRA v. Chicago* and *McDonald v. Chicago*.)

While on the Second Circuit, Judge Sotomayor revealed her views on the right to keep and bear arms in *Maloney v. Cuomo*, a case decided after *Heller*, yet holding that the Second Amendment is not a fundamental right, that it does not apply to the states, and that if an object is "designed primarily as a weapon" that is a sufficient basis for total prohibition even within the home. Earlier in a 2004 case, *United States v. Sanchez-Villar*, Sotomayor and two colleagues perfunctorily dismissed a Second Amendment claim holding that "the right to possess a gun is clearly not a fundamental right." Imagine if such a view were expressed about other fundamental rights guaranteed by the Bill of Rights, such as the First, Fourth and Fifth Amendments.

Surprisingly, *Heller* was a 5-4 decision, with some justices arguing that the Second Amendment does not apply to private citizens or that if it does, even a total gun ban could be upheld if a "legitimate governmental interest" could be found. The dissenting justices also found D.C.'s absolute ban on handguns within the home to be a "reasonable" restriction. If this had been the majority view, then any gun ban could be upheld, and the Second Amendment would be meaningless.

The Second Amendment survives today by a single vote in the Supreme Court. Both its application to the states and whether there will be a meaningfully strict standard of review remain to be decided by the High Court. Judge Sotomayor has already revealed her views on these issues and we believe they are contrary to the intent and purposes of the Second Amendment and Bill of Rights. As Second Amendment leaders deeply concerned about preserving all fundamental rights for current and future generations of Americans, we strongly oppose this nominee, and urge the Senate not to confirm Judge Sotomayor.

Sincerely,

Sandra S. Froman, Esq.  
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President, Arizona State Rifle & Pistol Association

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